taking the instruction as a whole, where the prosecution was required to prove every element of the offense beyond a reasonable doubt, and the court gave several instructions at the request of accused to the effect that the jury must acquit if they had any reasonable doubt of the guilt of the accused, which must have existed if the jury had any doubt as to whether accused was present in the commission of the offense.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 743.]

**10. Criminal Law (§ 723 (1)*)—Argument of Prosecuting Attorney Held Not Appeal to Passion.**—In a prosecution of accused for participation in a mob which attempted to lynch a negro, where the evidence showed there was considerable shooting by the mob and damage was done to the jail, an argument by the prosecuting attorney, inquiring whether a crowd of moonshiners were to be permitted to come into the town, shoot it up, frighten the women and children, break into the jail and destroy the county's property and go unpunished, was not unsupported by the evidence, and was not an appeal to passion and prejudice, even though accused was not charged with the commission of any of those acts.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 715.]

**11. Criminal Law (§ 713*)—Considerable Latitude Is Allowed in Argument.**—Very considerable latitude must be allowed to counsel in the argument of their cases.

Burks, J., dissenting.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 715.]

Error to Circuit Court, Halifax County.

John H. Draper was convicted of assault, and he brings error. Affirmed.

*Martin & Leigh,* of South Boston, for plaintiff in error.

*John R. Saunders, Atty. Gen., J. D. Hank, Jr., Asst. Atty. Gen.,* and *Leon M. Bazile, Second Asst. Atty. Gen.,* for the Commonwealth.

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GREEN *v.* COMMONWEALTH.

June 15, 1922.

[112 S. E. 562.]

**1. Criminal Law (§ 1159 (5)*)—Verdict on Positive Evidence Conclusive on Appeal.**—In a robbery prosecution, where the state's testimony of defendant's presence and of the assault and battery was direct and positive, the verdict of the jury on that point is conclusive upon appeal.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 351.]

**2. Robbery (§ 24 (1)*)—Evidence Held Insufficient to Convict of**

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

**Robbery.**—In a robbery prosecution, evidence to convict held not sufficient.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 954.]

**3. Robbery (§ 1*)—Defined "Taking."**—Robbery is the "taking," with the intent to deprive the owner permanently, of personal property, from his person or in his presence, against his will, by violence or intimidation, and the taking must be the securing dominion or absolute control of the property, though the absolute dominion be only momentary.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 952.]

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Robbery; Taking (In Larceny).]

Error to Circuit Court, Chesterfield County.

One Green was convicted of robbery, and he brings error. Reversed and remanded for new trial.

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GIBSON et al. *v.* COMMONWEALTH.

June 15, 1922.

[112 S. E. 563.]

**1. Criminal Law (§ 1129 (3)*)—General Assignment Court Erred in Instructions Is Insufficient.**—On writ of error to review a conviction, an assignment that the court erred in its instructions to the jury, as would be pointed out in the brief, but without any brief or oral argument to point out the error, was clearly insufficient, under Code 1919, § 6346, and Supreme Court Appeals rule 2 (94 S. E. vi).

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 546.]

**2. Criminal Law (§ 1172 (8)*)—Error in Instructions Held Harmless, Where Guilt Was Clear and Minimum Sentence Was Given.**—Where no verdict except that of guilty could properly have been found under the evidence, and the minimum sentence was imposed, any error in the instructions would be harmless.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 532.]

Error to Corporation Court of Charlottesville.

W. H. Gibson and others were convicted of transporting ardent spirits contrary to law, and they bring error. Affirmed.

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JUNIPER LUMBER CO. *v.* JOHN M. NELSON, JR., Inc.

June 15, 1922.

[112 S. E. 564.]

**1. Contracts (§ 274*)—Upon Cancellation by Mutual Agreement Right to Sue for Previous Breaches Held Not Reserved.**—Where plaintiff agreed to the cancellation of a contract between it and defendant without expressing any intent to reserve the right to sue for previ-

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.